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IN THE

# Supreme Court of the United States

**October Term, 1936.**

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**No. 43 Original.**

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THE STATE OF TEXAS,
*Complainant,*

against

THE STATE OF FLORIDA, *et al.*,
*Respondents.*

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## ANSWER OF THE RESPONDENT, THE STATE OF NEW YORK.

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JOHN J. BENNETT, JR.,
*Attorney General of New York.*

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*Special Assistant*
*Attorney General.*

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*The State of New York.*

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

IN THE

# Supreme Court of the United States

**October Term, 1936.**

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**No. 13 Original.**

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THE STATE OF TEXAS,
*Complainant,*

against

THE STATE OF FLORIDA, *et al.*,
*Respondents.*

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## ANSWER OF THE RESPONDENT, THE STATE OF NEW YORK.

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*To the Honorable the Chief Justice of the United States and the Associate Justices constituting the Supreme Court of the United States:*

Answering the bill of complaint herein, the respondent, the State of New York, says:

1. Answering Paragraphs numbered 1, 2, 8, 9, 18, 20, 23, 28, 29, 30, 34, 35 of the bill of complaint, this respondent admits all and singular the averments therein contained.

2. Answering Paragraphs numbered 24, 32, 33 of the bill of complaint, this respondent denies all and singular the averments therein contained.

3. Answering Paragraphs numbered 3, 5, 6 and 26 of the bill of complaint, this respondent, upon infor-

mation and belief, admits all and singular the averments therein contained.

4. Answering Paragraph numbered 4 of the bill of complaint, this respondent admits that there was in effect throughout the month of June, 1936 and had been continuously in effect for a long time prior thereto, Article 10-C of the Tax Law of the State of New York, which imposes a tax upon estates of residents and nonresidents, and that the United States of America had in effect during the month of June 1936 and for a long time prior thereto a law imposing an estate tax upon the estates of decedents, and, upon information and belief, this respondent admits that the Commonwealth of Massachusetts and the State of Florida each had in effect during the month of June, 1936 and for a long time prior thereto, a law imposing a transfer, succession, inheritance or estate tax upon the right of succession or inheritance.

5. Answering Paragraph numbered 7 of the bill of complaint, this respondent denies all and singular the averments therein contained except that it admits that the State of New York had in effect during the month of June 1936 and for a long time prior thereto a law imposing a tax on estates of residents and nonresidents. Said Estate Tax is provided for by Article 10-C of the Tax Law, a general law of the State of New York. Said article was added by Chapter 710 of the Laws of 1930 and amendments have been made to various sections contained in said Article by Chapters 62, 134, 135, 136, 137 and 151 of the Laws of 1931; Chapters 156, 320, 322, 323, 325, 326 and 333 of the Laws of 1932; Chapters 359, 459 and 460 of the Laws of 1933; Chapters 63, 434 and 639 of the Laws of 1934;

Chapters 39, 421 and 499 of the Laws of 1935 and by Chapters 126, 576 and 666 of the Laws of 1936. There is imposed by said Article a tax, on the transfer of net estates of decedents, which net estate is determined, in the case of resident decedents, by including in the gross estate the value at the time of death of all property, real and personal, tangible or intangible, wherever situated, except real property situated and tangible personal property having an actual situs outside the State of New York. In the case of a nonresident the tax is imposed upon the transfer of so much of the net estate as consists of real property situated and tangible personal property having an actual situs in the State of New York, determined in accordance with the formula contained in Section 249-p of said Tax Law. The rates are graduated, an increased rate being applicable on the amount in each succeeding bracket (Section 249-n). The amount of the tax is a lien upon the property transferred until paid (Section 249-bb). Said Article 10-C also contains a provision which in certain instances, bases the tax, in part, on the amount of the credit allowable against the Federal estate tax.

6. Answering Paragraph numbered 10 of the bill of complaint, this respondent admits that the decedent, Edward H. R. Green, died in Essex County, N. Y. in the month of June, 1936, but denies that he was domiciled within the State of Texas or in the City of Terrell in the County of Kaufman in said State at the time of his death, and is without knowledge or information as to the extent, location, character and value of the property possessed by the decedent at the time of his death except that this respondent admits, upon

information and belief, that the property possessed by the decedent at the time of his death was valued at upwards of $50,000,000.

7. Answering Paragraph numbered 11 of the bill of complaint, this respondent is without knowledge or information concerning all and singular the averments therein contained.

8. Answering Paragraph numbered 12 of the bill of complaint, this respondent admits all and singular the averments therein contained, assuming the value of the property of the estate of the said Edward H. R. Green to be substantially as alleged in the bill of complaint.

9. Answering Paragraph numbered 13 of the bill of complaint, this respondent denies all and singular the averments therein contained except that it admits that the State of Texas is entitled to levy and collect a transfer, succession, inheritance or estate tax upon the real and tangible personal property, possessed by the decedent at the time of his death, which is situated within the State of Texas.

10. Answering Paragraph numbered 14 of the bill of complaint, this respondent is without knowledge or information as to all and singular the averments therein contained except that it admits that the State of Florida is entitled to levy and collect a transfer, succession, inheritance or estate tax upon the real and tangible personal property, possessed by the decedent at the time of his death, which is situated within the State of Florida.

11. Answering Paragraph numbered 15 of the bill of complaint, this respondent is without knowledge or information as to all and singular the averments therein contained, except that it admits that the Commonwealth of Massachusetts is entitled to levy and collect a transfer, succession, inheritance or estate tax upon the real and tangible personal property, possessed by the decedent at the time of his death, which is situated within the Commonwealth of Massachusetts.

12. Answering Paragraph numbered 16 of the bill of complaint, this respondent admits all and singular the averments therein contained, assuming the value of the property of the estate of the said Edward H. R. Green to be substantially as alleged in the bill of complaint.

13. Answering Paragraph numbered 17 of the bill of complaint, this respondent is without knowledge or information as to the amount of the total net estate or the amount of transfer, succession, inheritance or estate taxes which the State of Florida or the Commonwealth of Massachusetts will attempt to collect, and denies that the State of Texas is entitled to collect taxes in the approximate amount of $5,326,000.

14. Answering Paragraph numbered 19 of the bill of complaint, this respondent admits all and singular the averments therein contained except that it is without knowledge or information as to whether Mabel Harlow Green asserts the right and privilege of succession to the whole of the tangible and intangible property owned by Edward H. R. Green at the time of his death.

15. Answering Paragraph numbered 21 of the bill of complaint, this respondent is without knowledge or information as to all and singular the averments therein contained, except that it denies that Edward H. R. Green was domiciled in the State of Texas at the time of his death on June 8, 1936.

16. Answering Paragraph numbered 22 of the bill of complaint, this respondent denies all and singular the averments therein contained, except that it admits that the said Edward H. R. Green was not domiciled in the Commonwealth of Massachusetts, or the State of Florida at the time of his death.

17. Answering Paragraph numbered 25 of the bill of complaint, this respondent admits all and singular the averments therein contained except that it denies that the State of Texas is in any wise entitled to any transfer, succession, inheritance or estate tax upon any part of the estate of the said Edward H. R. Green, except real property and tangible personal property situated in the State of Texas, and further denies that the State of Texas has any lien upon any part of the estate of the said Edward H. R. Green except real property and tangible personal property situated in the State of Texas.

18. Answering Paragraph numbered 27 of the bill of complaint, this respondent admits all and singular the averments therein contained, except that it is without knowledge or information as to whether the State of New York will appear in any proceeding yet to be instituted, and is without knowledge or information as to whether the State of Florida, the State of Texas or

the Commonwealth of Massachusetts will appear in any proceeding now pending or yet to be instituted.

19. Answering Paragraph numbered 31 of the bill of complaint, this respondent admits all and singular the averments therein contained except that it is without knowledge or information as to the amount of transfer, succession, inheritance or estate taxes claimed by the Commonwealth of Massachusetts or the State of Florida, and denies that the State of New York has instituted a so-called estate tax proceeding and further denies that the State of New York has claimed estate taxes in the amount set forth in paragraph numbered 16 of the bill of complaint.

20. Further answering the bill of complaint herein, this respondent denies that the said Edward H. R. Green at the time of his death on June 8, 1936, was domiciled in the State of Texas, or in the Commonwealth of Massachusetts, or in the State of Florida, or in any place other than the State of New York.

21. Further answering the bill of complaint herein, this respondent affirmatively alleges that Mabel Harlow Green as temporary administratrix appointed by the County Court of Kaufman County, State of Texas and as ancillary administratrix appointed by the County Judges' Court of Dade County, State of Florida, Thomas W. McDonald as temporary administrator appointed by the Surrogate's Court of Essex County, State of New York and Thomas Witter Chrystie as special administrator appointed by the Probate Court of Bristol County, Commonwealth of Massachusetts, each in their respective capacities, are proper parties to this controversy.

## COUNTERCLAIM.

And for a counterclaim this respondent, the State of New York, re-avers all the matters alleged in the foregoing answer, and specifically alleges that the decedent, Edward H. R. Green, was at the time of his death and had been continuously for a long time prior thereto domiciled within the State of New York. That the estate of the said Edward H. R. Green is subject to taxation under the provisions of Article 10-C of the Tax Law of the State of New York.

The provisions of Article 10-C of the Tax Law of the State of New York are set forth in full in Appendix A hereto, and the respondent prays this Court to consider the applicable provisions of said Article and the existence and effect thereof as an allegation of this counterclaim as if set forth in full herein.

WHEREFORE, this respondent prays that this Court now take proof as to the domicile of said Edward H. R. Green and determine and adjudge whether the said Edward H. R. Green was domiciled at the time of his death in the State of Florida, or in the State of Texas, or in the Commonwealth of Massachusetts, or in the State of New York, and more particularly determine and adjudge that the said Edward H. R. Green was domiciled at the time of his death within the State of New York and not within the State of Texas or within the Commonwealth of Massachusetts, or within the State of Florida, and further determine and adjudge that this respondent, the State of New York, has exclusive jurisdiction to impose and collect an estate tax

upon the intangible personal property owned by the said Edward H. R. Green at the time of his death.

THE STATE OF NEW YORK,
*Respondent.*
**JOHN J. BENNETT, JR.,** ***Attorney General***
By SETH T. COLE,
*Special Assistant Attorney General.*

JOHN J. BENNETT, JR.,
*Attorney General,*

SETH T. COLE,
*Special Assistant Attorney General,*

MORTIMER M. KASSELL,
*Attorneys for Respondent,*
*The State of New York.*

## Appendix A.

### ARTICLE 10-C

§ 249-m. *Definitions.* When used in this article:

(a) The term "executor" means the executor of the will or administrator of the estate of the decedent, or, if there be no such executor or administrator appointed, qualified and acting, then any person in actual or constructive possession of any property included in the gross estate of the decedent;

(b) The term "gross estate" means the gross estate as determined under the provisions of section two hundred and forty-nine-r hereof;

(c) The term "net estate" means the net estate as determined under the provisions of section two hundred and forty-nine-s hereof;

(d) The term "month" means calendar month;

(e) The term "person" includes an individual, a trustee, a corporation, an association, a joint-stock company, a copartnership and a bank;

(f) The term "tangible personal property" means corporeal personal property, including money, and the term "intangible personal property" means incorporeal personal property, including deposits in banks, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally;

(g) The term "persons interested in the estate" shall include all persons who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of a decedent, or any benefit whatsoever with respect to any such property or interest, whether under a will, or intestacy, or by reason of any of the transfers, trusts, estates, interests, rights, powers and relinquishment of powers as severally enumerated and described in section two hundred forty-nine-r of this article.

§ 249-n. *Tax on estates of resident decedents.* A tax equal to the sum of the following percentages of the

value of the net estate is hereby imposed upon the transfer of the net estate of every person dying on or after the effective date of this article who, at the time of death was a resident of this state, but net estates which, after deducting the applicable exemptions under section two hundred forty-nine-q of this article, do not exceed two thousand dollars shall not be taxable:

Four-fifths of one per centum of the amount of the net estate not in excess of one hundred fifty thousand dollars, except so much thereof as may be exempted from tax under the provisions of section two hundred forty-nine-q hereof:

One and three-fifths per centum of the amount by which the net estate exceeds one hundred fifty thousand dollars and does not exceed two hundred thousand dollars;

Two and two-fifths per centum of the amount by which the net estate exceeds two hundred thousand dollars and does not exceed three hundred thousand dollars;

Three and one-fifth per centum of the amount by which the net estate exceeds three hundred thousand dollars and does not exceed five hundred thousand dollars;

Four per centum of the amount by which the net estate exceeds five hundred thousand dollars and does not exceed seven hundred thousand dollars;

Four and four-fifths per centum of the amount by which the net estate exceeds seven hundred thousand dollars and does not exceed nine hundred thousand dollars;

Five and three-fifths per centum of the amount by which the net estate exceeds nine hundred thousand dollars and does not exceed one million one hundred thousand dollars;

Six and two-fifths per centum of the amount by which the net estate exceeds one million one hundred thousand dollars and does not exceed one million six hundred thousand dollars;

Seven and one-fifth per centum of the amount by which the net estate exceeds one million six hundred

thousand dollars and does not exceed two million one hundred thousand dollars;

Eight per centum of the amount by which the net estate exceeds two million one hundred thousand dollars and does not exceed two million six hundred thousand dollars;

Eight and four-fifths per centum of the amount by which the net estate exceeds two million six hundred thousand dollars and does not exceed three million one hundred thousand dollars;

Nine and three-fifths per centum of the amount by which the net estate exceeds three million one hundred thousand dollars and does not exceed three million six hundred thousand dollars;

Ten and two-fifths per centum of the amount by which the net estate exceeds three million six hundred thousand dollars and does not exceed four million one hundred thousand dollars;

Eleven and one-fifth per centum of the amount by which the net estate exceeds four million one hundred thousand dollars and does not exceed five million one hundred thousand dollars;

Twelve per centum of the amount by which the net estate exceeds five million one hundred thousand dollars and does not exceed six million one hundred thousand dollars;

Twelve and four-fifths per centum of the amount by which the net estate exceeds six million one hundred thousand dollars and does not exceed seven million one hundred thousand dollars;

Thirteen and three-fifths per centum of the amount by which the net estate exceeds seven million one hundred thousand dollars and does not exceed eight million one hundred thousand dollars;

Fourteen and two-fifths per centum of the amount by which the net estate exceeds eight million one hundred thousand dollars and does not exceed nine million one hundred thousand dollars;

Fifteen and one-fifth per centum of the amount by which the net estate exceeds nine million one hundred thousand dollars and does not exceed ten million one hundred thousand dollars;

Sixteen per centum of the amount by which the net estate exceeds ten million one hundred thousand dollars.

(*Temporary schedule of taxes below applicable to estates of persons dying between April 22, 1933 and July 1, 1937.*)

Notwithstanding any of the foregoing provisions of this section and in lieu of the tax hereinbefore provided, there shall be and is hereby imposed upon the transfer of the net estate of every person dying on or after the date on which this paragraph becomes effective and prior to the first day of July, nineteen hundred thirty-seven, who at the time of death was a resident of this state, a tax equal to the sum of the following percentages of the value of the net estate, but net estates which, after deducting the applicable exemptions under section two hundred forty-nine-q of this article, do not exceed two thousand dollars shall not be taxable:

One per centum of the amount of the net estate not in excess of one hundred fifty thousand dollars, except so much thereof as may be exempted from tax under the provisions of section two hundred forty-nine-q hereof;

Two per centum of the amount by which the net estate exceeds one hundred fifty thousand dollars and does not exceed two hundred thousand dollars;

Three per centum of the amount by which the net estate exceeds two hundred thousand dollars and does not exceed three hundred thousand dollars;

Four per centum of the amount by which the net estate exceeds three hundred thousand dollars and does not exceed five hundred thousand dollars;

Five per centum of the amount by which the net estate exceeds five hundred thousand dollars and does not exceed seven hundred thousand dollars;

Six per centum of the amount by which the net estate exceeds seven hundred thousand dollars and does not exceed nine hundred thousand dollars;

Seven per centum of the amount by which the net estate exceeds nine hundred thousand dollars and does not exceed one million one hundred thousand dollars;

Eight per centum of the amount by which the net estate exceeds one million one hundred thousand dollars and does not exceed one million six hundred thousand dollars;

Nine per centum of the amount by which the net estate exceeds one million six hundred thousand dollars and does not exceed two million one hundred thousand dollars;

Ten per centum of the amount by which the net estate exceeds two million one hundred thousand dollars and does not exceed two million six hundred thousand dollars;

Eleven per centum of the amount by which the net estate exceeds two million six hundred thousand dollars and does not exceed three million one hundred thousand dollars;

Twelve per centum of the amount by which the net estate exceeds three million one hundred thousand dollars and does not exceed three million six hundred thousand dollars;

Thirteen per centum of the amount by which the net estate exceeds three million six hundred thousand dollars and does not exceed four million one hundred thousand dollars;

Fourteen per centum of the amount by which the net estate exceeds four million one hundred thousand dollars and does not exceed five million one hundred thousand dollars;

Fifteen per centum of the amount by which the net estate exceeds five million one hundred thousand dollars and does not exceed six million one hundred thousand dollars;

Sixteen per centum of the amount by which the net estate exceeds six million one hundred thousand dollars and does not exceed seven million one hundred thousand dollars;

Seventeen per centum of the amount by which the net estate exceeds seven million one hundred thousand dollars and does not exceed eight million one hundred thousand dollars;

Eighteen per centum of the amount by which the net estate exceeds eight million one hundred thousand dollars and does not exceed nine million one hundred thousand dollars;

Nineteen per centum of the amount by which the net estate exceeds nine million one hundred thousand dollars and does not exceed ten million one hundred thousand dollars;

Twenty per centum of the amount by which the net estate exceeds ten million one hundred thousand dollars.

Notwithstanding any of the foregoing provisions of this section or any other provision of this article, there shall be imposed upon the transfer of the net estate of every person who at the time of death was a resident of this state, a tax equal to the maximum credit allowable to the estate of such decedent against the United States estate tax imposed with respect thereto, except that proper reduction of the amount of such tax shall be made on account of any real or tangible personal property forming a part of the gross estate of such decedent which is located outside of the state of New York; but the provisions of this paragraph shall in no event have the effect of reducing the tax otherwise imposed by this article.

The tax imposed by this section shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in order that it shall be proportionately borne by those who have received the benefit.

§ 249-o. *Credits against the tax.* The tax imposed by section two hundred forty-nine-n hereof shall be

credited with the amount of any constitutionally valid estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States (other than this state) or to the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent), but the amount to be so credited shall in no event exceed the amount of tax imposed by said section two hundred forty-nine-n in respect of the property on which the tax to be credited was imposed. For the purpose of this section the amount of tax imposed by said section two hundred forty-nine-n in respect of any particular item or items of property shall be deemed to be that proportion of the total tax imposed by said section two hundred forty-nine-n upon the entire net estate which the value of said item or items bears to the value of the entire gross estate. Where a tax has been paid to another state or territory of the United States or to the District of Columbia with respect to property included in the gross estate and other property, so as to make an apportionment necessary in determining the amount of credit hereunder, such tax shall be apportioned in the ratio that the value of the particular item or items of property included in the gross estate is to the gross value of the entire property on which such tax was imposed. Credit under this section shall only be allowed if such taxes are actually paid and claim for credit made within three years after the date of decedent's death, except that the tax commission may, for good cause shown, extend the period for payment of such taxes and for making such claim.

§ 249-p. *Tax on estates of nonresident decedents.* A tax is hereby imposed upon the transfer of so much of the net estate of every person dying on or after the effective date of this article, who, at the time of death, was a nonresident of this state, as consists of real property situated and tangible personal property having an actual situs in this state. The amount of the tax on such real and tangible personal property shall be determined as follows:

Ascertain the amount of tax which would be payable under this article if the decedent had died a resident

of this state with all his property (except real property situated and tangible personal property having an actual situs outside this state) situated or located within this state, and multiply the net tax so ascertained by a fraction the denominator of which shall be the value of the gross estate as ascertained for the purpose of computing such tax and the numerator of which shall be the said gross estate value of the real property situated and the tangible personal property having an actual situs in this state. The product shall be the amount of tax payable to this state. No credit shall be allowed against the tax so determined.

The tax imposed by this section shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in order that it shall be proportionately borne by those who have received the benefit.

§ 249-q. *Exemptions.* The tax of four-fifths of one per centum of the amount of the net estate not in excess of one hundred and fifty thousand dollars imposed by section two hundred and forty-nine-n of this article shall not be payable with respect to

a. The amount of the net estate not exceeding twenty thousand dollars transferred to a husband or wife;

b. The amount of the net estate, not exceeding five thousand dollars in each instance, transferred to a lineal ancestor or descendant, adopted child, stepchild, or lineal descendant of an adopted child or stepchild, or to a brother or sister, or to the wife or widow of a son, or to the husband or a widower of a daughter, or to any child to whom the decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter.

c. So much of the amount required to be included in the gross estate under the provisions of paragraph numbered nine of section two hundred forty-nine-r of this chapter as does not exceed one hundred thousand dollars less the aggregate of any exemptions otherwise allowable under this section.

§ 249-r. *Gross estate.* The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated (except real property situated and tangible personal property having an actual situs outside this state):

1. To the extent of the interest therein of the decedent at the time of his death;

2. To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death, as dower, curtesy or by virtue of a statute creating an estate in lieu of dower or curtesy;

3. To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (a) the possession or enjoyment of, or the right to the income from, the property or (b) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property made by the decedent within two years prior to his death, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this article;

4. To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. For the purposes of this

paragraph the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of five thousand dollars, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this article;

5. To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; provided, that where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the

value of such property as is proportionate to the consideration furnished by such other person; provided, further, that where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants, and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

6. To the extent of any personal property belonging to a husband which passes to his widow by virtue of her survivorship because of the husband having placed such property in his and his wife's names with intent to create a right of survivorship in her;

7. To the extent of any property passing under a general power of appointment exercised by the decedent (a) by will, or (b) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, or (c) by deed under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a *bona fide* sale for an adequate and full consideration in money or money's worth;

7-a. To the extent of any property passing under a power of appointment exercised by the decedent (a) by will, or (b) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a *bona fide* sale for an adequate and full consideration in money or money's worth, exclusive of property the value of which is required to be included in the gross estate pursuant to paragraph numbered seven of this section, and provided that the transfer of such property is not or was not subject to a death tax in the estate of the grantor

of such power but would have been so taxable except for a statute providing that the tax on the transfer of such property should be imposed in the estate of the grantee of such power in the event of the exercise thereof.

8. To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life;

9. To the extent of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life, but only to the extent that such amount is required to be included in the gross estate under the provisions for the taxing of estates contained in any revenue act of the United States applicable to the estate of the decedent;

10. Subdivisions two, three, four, five, six, seven, eight and nine of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this article;

11. If any one of the transfers, trusts, interests, rights, or powers enumerated and described in subdivisions three, four and seven of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a *bona fide* sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

12. For the purposes of this article, a relinquishment or promised relinquishment of dower, curtesy or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considerd to any extent a consideration "in money or money's worth."

§*249-s. Net estate.* For the purpose of the tax the value of the net estate shall be determined by deducting from the value of the gross estate:

1. Such amounts (a) for funeral expenses, (b) for administration expenses, (c) for claims against the estate, (d) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and (e) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of this state, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy or inheritance taxes, but such taxes (other than income and property taxes) shall be allowed as a credit in the manner provided by section two hundred forty-nine-o of this article. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall when founded upon a promise or agreement, be limited to the extent that they were contracted *bona fide* and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return; but if such losses are allowable as a deduction under this section they shall not be allowed as a deduction under the provisions of section three hundred sixty of this chapter. Deductions on account of commissions or allowances to executors shall not exceed the amount of such commissions or allowances as prescribed by law;

2. An amount equal to the value of any property (a) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (b) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise or inheritance, or which can be identified as having

been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the United States revenue act of nineteen hundred thirty-two or an estate tax imposed under the United States revenue act of nineteen hundred twenty-six or any prior act of congress of the United States, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift for the purpose of such gift tax, or the gross estate of such prior decedent for the purpose of such estate tax, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining such gift tax, or such estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs numbered one and three of this section, and paragraph numbered four of section three hundred three (a) of the United States revenue act of nineteen hundred twenty-six, as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

3. The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any state, territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation, wheresoever incorporated or located, organized and operated exclusively for religious, charitable, scientific, literary, patriotic, historical, bar association, or educational purposes, including the encouragement of art and the

prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, patriotic, historical, bar association, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by sections two hundred forty-nine-n or two hundred forty-nine-p of this article, or any estate, succession, legacy or inheritance taxes, are, either by the terms of the will or pursuant to any provision of law of this or any other jurisdiction, payable in whole or in part out of the bequests, legacies or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

§ *249-t. Jurisdiction of the surrogate.* 1. The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent which estate is subject to tax under this article, or to appoint a trustee of such estate, or any part thereof, or to grant ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, including specifically, but without limitation, jurisdiction to finally determine the amount of the tax imposed by this article, and to fix and adjudge the proportions in which the same shall be borne by the persons interested in the estate as in section one hundred twenty-four of the decedent estate law provided, and to do any act authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such

jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or of administration, and every petition for original letters testamentary or of administration in the estate of a decedent who at the time of his death was not domiciled in this state, shall set forth the tax commission as a party to be cited, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon presentation thereof the surrogate shall issue a citation directed to the tax commission; and upon the return of the citation the surrogate may estimate the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the tax commission were a creditor of the decedent.

2. Whenever the tax commission is cited on the issuance of original letters testamentary or of administration in the estate of a decedent not domiciled in this state, as in the preceding subdivision provided, it shall immediately notify the proper taxing authorities of the state in which such decedent was domiciled of the fact of the filing of the petition and of the decedent's property and the value thereof, as set forth in the petition. No executor or administrator of the estate of such a decedent to whom original letters have been issued pursuant to a petition filed subsequently to the time this subdivision takes effect shall be entitled to a final accounting or discharge unless he shall have filed with the surrogate proof that all death taxes, together with interest or penalties thereon, due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid or secured, or a consent by the proper taxing authorities of the state of domicile to such final accounting or discharge. It shall be the duty of the tax commission to cooperate with the domiciliary taxing authorities and to furnish them with such information as may be requested with respect to any such estate. The official or body charged with the administration of the death tax laws of the

domiciliary state shall be deemed a party interested in such estate to the extent that he or it may petition for an accounting therein if the death taxes, interest and penalties due such domiciliary state, or a political subdivision thereof, are not paid or secured, and upon such petition the surrogate may decree such accounting and may decree the remission to a fiduciary appointed by the domiciliary probate court of so much of the personal property of such estate as may be necessary to insure the payment to the state of domicile, or political subdivision thereof, of the amount of death taxes, interest and penalties due to such state or political subdivision. The provisions of this subdivision shall apply to the estate of a decedent not domiciled in this state only if the laws of the state of his domicile contain a provision, of any nature or however expressed, whereby this state is given reasonable assurance of the collection of its death taxes, interest and penalties, from the estates of decedents dying domiciled in this state in cases where the estates of such decedents are being administered by the probate court of such other state by virtue of original letters testamentary or of administration, or if the state in which such decedent was domiciled does not grant letters testamentary or of administration in estates of non-residents until after letters have been issued by the state of domicile. The provisions of this subdivision shall be liberally construed in order to insure that the state of domicile of a decedent shall receive any death taxes, together with interest and penalties thereon, due to it from such decedent's estate. For the purposes of this subdivision the word "state" shall be construed to include only the states of the United States, any territory of the United States, the District of Columbia, and the Dominion of Canada or any province thereof.

3. When it is made to appear to a surrogate of any county in this state that a safe deposit company, trust company, bank, person or corporation has in its possession or under its control papers of a decedent of whose estate such court has jurisdiction or that the decedent had leased from such a corporation a safe deposit box, and that such papers or such safe deposit box may contain a will of the decedent, a deed to a burial plot in

which the decedent is to be interred or a policy of insurance issued in the name of the decedent and payable to a named beneficiary, he may make an order directing such safe deposit company, trust company, bank, person or corporation to permit a person named in the order to examine such papers or safe deposit box and to make an inventory of such papers or of the contents of such safe deposit box in the presence of a representative of the tax commission and an officer of such safe deposit company, trust company, bank or corporation, or agent of such person, and if a paper purporting to be a will of the decedent, the deed to a burial plot is found among such papers, or in such box, to deliver such will to the clerk of the surrogate's court of such county, or such deed to such person as may be designated in such order, or such policy of insurance to the beneficiary named therein. The clerk of said court shall furnish a receipt upon the delivery to him of the will.

§ 249-u. *Appointment of appraisers, stenographers and clerks.* There shall be a salaried appraiser for each of the counties of Albany, Bronx, Chautauqua, Dutchess, Erie, Kings, Nassau, New York, Niagara, Monroe, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk, and Westchester. The commissioner of taxation and finance shall appoint for each such county an appraiser, and such stenographers and other employees as may be needed for the proper administration of this article, and shall fix their salaries within the amounts appropriated for such purpose. Such commissioner may also designate one or more deputy appraisers for any of the aforementioned counties. Appraisal reports may be signed by the appraiser or deputy. The provisions of section nine of the public officers law shall apply to deputy appraisers appointed pursuant to this section. In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser.

§ 249-v. *Proceedings by appraiser; return by executor.* The surrogate, either upon his own motion, or upon the application of the tax commission, or of any person interested in the estate, shall by order direct

the appraiser for his county to fix the fair market value of property of estates subject to tax under this article. The surrogate may make an order directing the appraiser to so act with regard to any number of estates and cause the same to be filed in his office, and such order shall have the same force and effect in relation to each estate specified therein as if made solely with respect thereto.

Every such appraiser shall give notice by mail to the executor, the tax commission, all persons interested in the estate, and to such other persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value and for that purpose is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value, in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require, including the return of the executor as hereinafter provided for and shall report the amount of the gross estate, together with the items thereof, the amount of deductions, with the items thereof, and the amount of the net estate.

The executor shall within sixty days after the entry of the order directing the appraisal file with the appraiser a return under oath containing such information as may be necessary for the purpose of appraising the estate. The time within which such return is to be filed may be extended by the appraiser for good cause shown. It may be required that such return be made in triplicate and the executor shall also be required to furnish such supplemental returns or additional data as may be necessary. If the executor is unable to make a complete return as to any part of the gross estate of the decedent he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the appraiser such person shall in like

manner make a return as to such part of the gross estate. Failure to make any return as herein provided shall subject the executor or other person required to make the same to a penalty of one thousand dollars, to be recovered in an action brought by the tax commission, and if such failure be with intent to evade the tax, the executor or such other person shall be guilty of a misdemeanor; provided, however, that upon the return being filed the surrogate in his discretion may waive the penalty in any case where there was no intent to evade the tax. In case of failure to file a return the surrogate or appraiser may determine the value of the property of the estate which is subject to tax on the basis of the best information available, subject to correction from time to time, if it appears that a further tax is due.

The value of every future or limited estate, income, interest or annuity for any life or lives in being, or in any way dependent upon any life or lives in being, whether vested or contingent, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies and according to the actuaries' or combined experience table of mortality, as extended, except that the rate of interest for making such computation shall be four per centum per annum compounded annually, and the superintendent of insurance shall, on the application of the surrogate or appraiser, make such determination and certify the same to the surrogate or appraiser, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

Every appraiser shall be paid his actual and necessary traveling expenses and the fees paid to witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of moneys appropriated for such purpose.

The report of the appraiser shall be made in duplicate and shall be simultaneously filed in the office of the surrogate and tax commission.

§ 249-w. *Determination of surrogate.* From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the value of such estate and the amount of tax to which the same is liable; or the surrogate may so determine the value of any such estate and the amount of tax to which the same is liable, without appointing an appraiser. Such determination may be made without regard to the provisions of the next to last paragraph of section two hundred forty-nine-n of this article if the final determination of the United States estate tax has not been made, but if it shall appear by such final determination, when made, that an additional tax is imposable because of the provisions of such paragraph, the surrogate shall make a supplemental determination of the amount of such additional tax. It shall be the duty of the executor of every estate which is subject to the United States estate tax to file with the tax commission a copy of the final determination thereof forthwith after the same is made. At the time of making any such determination, or thereafter in an accounting or other appropriate proceedings, the surrogate may fix and adjudge the proportions in which the tax shall be borne by the persons interested in the estate as in section one hundred and twenty-four of the decedent estate law provided.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, and as to the proportions in which the tax shall be borne by persons interested in the estate if that be determined at the same time, to the executor and to all persons interested in the estate, and shall immediately forward a copy of such taxing order to the tax commission. If the proportions in which the tax shall be borne are to be determined in another proceeding citations therein shall be issued to all persons interested in the estate. The surrogate shall also forward to the tax commission copies of all orders entered by him in relation to or affecting in any way the tax on any estate, including orders of exemption.

If, however, it appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings.

§ *249-x. Appeal and other proceedings.* The tax commission, executor or any person interested in the estate if dissatisfied with the appraisement or assessment and determination of tax, or with the fixation and adjudgment of the proportions in which the tax shall be borne, if that be determined at the same time, may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken; such appeal may be taken at any time on the ground that the return of the executor was false or fraudulent or did not include all of the property of the estate; no costs shall be allowed by the surrogate on such appeal. In proceedings to which the tax commission is cited as a party under sections two hundred and forty-nine-t and two hundred and forty-nine-v of this chapter, it is authorized to designate and retain counsel to represent it and to pay the expenses thereby incurred out of money appropriated for such purpose.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the tax commission may, if it believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district embracing the surrogate's court in which the order or decree has been filed, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint

a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and forty-nine-v of this article and shall receive compensation at the rate of ten dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the tax commission out of moneys appropriated for such purpose, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the tax commission, and a certified copy thereof transmitted to the surrogate's court of the proper county.

§ *249-y. Vacancy in office of appraiser; proceedings continued by successor.* In case an appraiser is appointed pursuant to section two hundred forty-nine-u of this article to succeed another appraiser, such successor shall continue and complete all proceedings pending before his predecessor, and without the making by the surrogate of orders in such proceedings designating him so to act, with the same force and effect as if such proceedings had been continued and completed by such predecessor, and such successor shall be deemed to have been substituted for his predecessor in each such proceeding.

§ *249-z. When tax due; discount and interest.* 1. The tax imposed by this article shall be due and payable at the time of the decedent's death and shall be paid by the executor, subject to being by him charged against and collected from the persons interested in the estate, to the tax commission in a county in which the office of appraiser is salaried, and in other counties, to the county treasurer, and said tax commission or county treasurer shall furnish duplicate receipts therefor. If the tax has not been assessed, a temporary payment may be made by the executor for the purpose of obtaining the discount herein provided for

or of avoiding interest. If the tax is paid within six months from date of death of the decedent a discount of five per centum shall be allowed and deducted therefrom. If the tax is not paid within such six months, such discount rate shall be reduced by subtracting one-half of one per centum each month after the expiration of such six months, until such discount is exhausted. If the tax is not paid within eighteen months from the date of death of the decedent interest shall be charged and collected thereon at the rate of ten per centum per annum from the date of the decedent's death, except that if the total tax imposed upon an estate by this article exceeds five per centum of the net estate the tax commission shall, and may in other cases where it finds that the payment within eighteen months from the due date of any part of the amount of the tax would impose undue hardship upon the estate, extend the time for payment for such period as it may deem reasonable, but not to exceed four years from the due date, and may require payment to be made in annual instalments. If the time for payment is extended, that portion of the tax as to which an extension is granted shall bear interest at the rate of six per centum per annum after the expiration of eighteen months from the due date to the expiration of the period of extension, which interest shall be paid by the executor in addition to the tax, but if payment is not made within the period of extension interest shall be charged and collected at the rate of ten per centum per annum from the date of death of the decedent until the tax is paid. If an extension is granted, the tax commission may require the executor to furnish a bond in such amount, not exceeding double the amount in respect of which the extension is granted, and with such sureties as the tax commission deems necessary, conditioned upon the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. In case the time of payment has not been extended by the tax commission and the tax or any portion thereof is subject to interest at the rate of ten per centum per annum, such interest may be reduced by the surrogate to six per centum per annum, if by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay

Where it appears that a tax was paid before the entry of a taxing order and such order shows that the amount of tax due is less than the amount so paid, the tax commission, with the approval of the comptroller, shall refund to the persons entitled thereto the amount so paid in excess of the amount of tax fixed by the taxing order, out of funds in the custody of the comptroller to the credit of such taxes, provided application for such refund be filed with the tax commission within one year from the entry of such taxing order.

§ *249-bb. Lien of tax; warrant for collection.* Every such tax shall be and remain a lien upon the property transferred until paid, except that the tax commission shall have power to release the lien hereby imposed with respect to all or any part of such property, if it be satisfied that the collection of the tax will not thereby be jeopardized, and the executor of every estate shall be personally liable for such tax until its payment. Every executor shall have full power to sell so much of the property of the estate as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the estate.

If (a) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of

the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a lien equal to the amount of such tax which shall continue until the tax is paid. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

The tax commission shall have power to enforce the liens hereby created by action, may maintain an action against the executor personally to recover the tax, or if the tax is not paid within eighteen months after the decedent's death, or within any period of extension, if an extension be granted, the tax commission may issue a warrant under its official seal, directed to the sheriff of any county, commanding him to levy upon and sell any or all of the real and personal property on which the tax is a lien found within his county for the payment of the amount of such tax with interest as provided in this article, and the cost of executing the warrant, and to return such warrant to the tax commission and pay to it the money collected by virtue thereof by a time to be therein specified, not later than sixty days from the date of the warrant. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments of courts of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any of its employees designated for that purpose and in the execution thereof such employees shall have all the powers conferred by law upon sheriffs but shall be entitled to no fees or compensation in excess of actual expense paid in the performance of such duty. If a warrant be returned not satisfied in full, the tax commission shall

have the same remedies to enforce the claim for taxes against the executor as if the people of the state had recovered judgment against the executor for the amount of the tax. In case any tax recovered by the tax commission pursuant to this subdivision was payable to a county treasurer, it shall pay to such county treasurer the amount of such recovery.

Any interested person may apply to the tax commission for a release of the lien of the tax with respect to any parcel of real property. If such application be granted, the tax commission, upon the payment to it of the sum of two dollars, shall execute a release of the lien of the tax, and such release may be recorded in the office of the recording officer of the county where the real property described therein is situated, in the book specified in subdivision three of section two hundred and forty-nine-z of this article.

§ 249-cc. *Liability of certain corporations to tax.* No safe desposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the tax commission at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the

shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed under the provisions of this article on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the tax commission consents thereto in writing. And it shall be lawful for the tax commission or its representative to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of not less than five thousand or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the tax commission in any court of competent jurisdiction. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the persons entitled thereto as soon as it shall have mailed to the tax commission a notice, in such form as the tax commission may prescribe, setting forth the fact of such payment, but if such notice be not mailed all of the provisions of this section shall apply. The prohibitions of this section concerning the delivery or transfer of property shall in case of a non-resident decedent apply only

to tangible personal property having an actual situs in this state.

§ 249-dd. *Surrogate's assistants in New York, Kings and other counties.* The commissioner of taxation and finance may, upon the recommendation of the surrogate, appoint and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, and shall fix their salaries within the amounts appropriated for that purpose:

1. In New York county, a transfer and estate tax assistant; a deputy transfer and estate tax assistant; a transfer and estate tax clerk; an assistant clerk; a recording clerk; a stenographer; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for the expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

2. In Kings county, a transfer and estate tax assistant; a deputy transfer and estate tax assistant; two transfer and estate tax clerks; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

3. In Erie county a transfer and estate tax clerk.

4. In Westchester county, a transfer and estate tax assistant.

5. In Albany county, a transfer and estate tax clerk.

6. In Queens county, a transfer and estate tax clerk.

7. In Onondaga county, a transfer and estate tax clerk; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

8. In Monroe county, a transfer and estate tax clerk; and shall be entitled to expend not more than three hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article and article ten of this chapter.

9. In Dutchess county, a transfer and estate tax clerk.

10. In Oneida county, a transfer and estate tax clerk.

11. In Suffolk county, a transfer and estate tax clerk.

12. In Ulster county, a transfer and estate tax clerk.

13. In Richmond county, a transfer and estate tax clerk.

14. In Nassau county, a transfer and estate tax clerk.

15. In Bronx county, a transfer and estate tax assistant.

16. In Orange county, a transfer and estate tax clerk.

17. In each county of the state having a population of over one million, and in each county of the state having a population of over three hundred thousand inhabitants, included in or adjoining a city containing a population of over one million inhabitants, the surrogate or surrogates shall each annually receive for compensation for ministerial services rendered in connection with the administration of transfer and estate taxes the sum of four thousand dollars in addition to the salary or compensation paid to such surrogate by the county, but such salary and compensation shall not together exceed the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included. The additional compensation provided for by this subdivision shall be payable in the same manner as salaries and expenses under this section.

18. In each county of the state the surrogate shall receive annually for such services rendered in connection with the administration of transfer and estate taxes as are ministerial only and not incident to holding courts or performing duties as a judicial officer the respective sums following:

a. In any such county having a population of less than ten thousand, one hundred dollars;

b. In any such county having a population of ten thousand or more but less than fifty thousand, five hundred dollars;

c. In any such county having a population of fifty thousand or more but less than one hundred thousand, six hundred dollars;

d. In any such county having a population of one hundred thousand or more but less than two hundred thousand, nine hundred dollars;

e. In any such county having a population of two hundred thousand or more but less than five hundred thousand, twelve hundred dollars;

f. In any such county having a population of five hundred thousand or more, twenty-five hundred dollars.

No provision of this subdivision shall repeal or affect the provisions of subdivision seventeen of this section, but the provisions of this subdivision shall apply to the surrogate or surrogates mentioned in said subdivision seventeen of this section, provided that any payment or payments made to him or them, whether under this subdivision or subdivision seventeen, or both, shall not in all exceed the sum of four thousand dollars annually. Such sum shall not, however, in addition to the salary or compensation paid to any surrogate by the county, together exceed the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included.

The moneys provided to be paid for services by this subdivision shall be payable in the same manner as salaries and expenses under this section. Such salaries and expenses shall be paid upon proper vouchers, out of moneys appropriated for such purpose.

§ 249-ee. *Receipts for taxes.* The receipts issued for the payment to the tax commission of any tax under this article shall be signed and sealed by the tax commission and, if issued by any county treasurer, countersigned by the tax commission. Upon countersigning the receipt, the tax commission shall charge the county

treasurer receiving the tax with the amount thereof and affix the seal of its office to the same and return to the proper person.

§ 249-ff. *Fees of county treasurer.* The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes collected by him each fiscal year under this article, ten per centum on the first twenty-five thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers, but the aggregate amount thereof in any county for the period from January first to June thirtieth, inclusive, nineteen hundred thirty-two, shall not exceed the sum of two thousand five hundred dollars and thereafter shall not exceed the sum of five thousand dollars in any fiscal year.

§ *249-gg. Books and forms to be furnished by the tax commission.* The tax commission shall furnish to each surrogate a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, and the estimated value of his real and personal property. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of any other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him and the value of the property of such decedent as fixed by the surrogate. The tax commission shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book. Notwithstanding the foregoing provisions of this section,

the furnishing of such book and the keeping of such records may be dispensed with, if the surrogate and the tax commission shall deem the same to be unnecessary, provided the data necessary for the reports required to be made by the surrogate are available from other records of the surrogate's office.

§ *249-hh. Reports of surrogate and recording officer.* Each surrogate shall, on January, April, July and October first of each year, make a report, upon the forms furnished by the tax commission, containing all the data and matters required to be entered in such book, which shall be immediately forwarded to the tax commission. The recording officer of each county shall, at the same times, make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, which shall be immediately forwarded to the tax commission.

§ *249-ii. Reports of county treasurer.* Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the tax commission, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the tax commission. The county treasurer shall, within thirty days after the receipt thereof, pay to the department of taxation and finance all taxes received by him under this article, and for all taxes received by him and not so paid to the department of taxation and finance he shall pay interest at the rate of ten per centum per annum.

§ *249-jj. Disposition of revenues.* The tax commission shall deposit all taxes collected by it under this article in a responsible bank, banking house or trust company in the city of Albany designated by the state comptroller, which shall pay the highest rate of interest to the state for such deposit, to the credit of the

state comptroller on account of the estate tax. And every such bank, banking house or trust company shall execute and file with the state comptroller an undertaking to the state, in the sum, and with such sureties as are required and approved by the state comptroller, for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as may be agreed upon. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the attorney-general as to its form. The state comptroller shall on or before the tenth day of each month pay to the commissioner of taxation and finance the balance of such taxes remaining in his hands at the close of business on the last day of the previous month. All taxes collected under this article when paid into the treasury of the state shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

§ *249-kk. Exemption in other laws not applicable.* No exemption provided for in any other article of this chapter or any other law of this state shall be construed as being applicable in any manner under this article.

§ *249-ll. Limitation of time.* The provisions of the civil practice act relative to limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or interest prescribed by this article.

§ *249-mm. Application of article.* In respect of persons dying after this article becomes effective it shall supersede any other article of the tax law which imposes a transfer, inheritance or estate tax; but in respect of any person dying or who died before this article takes effect, the provisions of law imposing transfer, inheritance or estate taxes in effect at the time of his or her death shall remain in full force and effect. Nothing in this section contained shall affect any tax upon a transfer made prior to September first, nineteen hundred thirty, which was imposed as of the date of said transfer.